IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.9469 OF 2005
WITH
WRIT PETITION NO.9470 OF 2005

Jayesh Kumar Majithia, .. Petitioner
Vs
Smt Rasilaben H. Patel and ors .. Respondents.

Mr Vipin Kamdi, for the petitioner.
Mr J.P.Patel, for respondent no.1.
Mr M.H.Solkar, AGP for respondent nos 2 and 3.

CORAM : D.B.BHOSALE,J.
DATE : 23.01.2007

PC:

1. The petitioner in both these writ petitions has taken exception to the concurrent findings recorded by the authorities below by which the applications, bearing case nos 56 and 57 of 2003 filed under section 24 of the Maharashtra Rent Control Act, 1999 (for short, "the Act") seeking his eviction filed by the respondent-landlady, stand allowed and the petitioner has been directed to hand over the possession of the suit premises to the respondent and ordered to pay damages.

2. Leave and Licence Agreements between the petitioner and the respondent in respect of two flats

mentioned therein were executed for a period from 1.11.02 to 30.9.03. Both the leave and licence agreements were duly registered. The period of agreements was not extended by the respondent. However, the petitioner refused to vacate the suit flats and as a result thereof, the respondent was forced to file the applications for eviction which were allowed by the competent authority vide its judgment and order dated 18.8.2005. The two revisions filed by the petitioner challenging the said orders also came to be dismissed vide order dated 29.11.2005 by the Addl. Commissioner, Konkan Division, Mumbai. These two orders are the subject matter of these two writ petitions under Article 227 of the Constitution of India.

3. Mr.Kamdi, learned counsel for the petitioner, at the outset, submitted that the orders passed by the authorities below are without jurisdiction. He submitted that the period of the leave and licence agreement, that is, 1.11.2002 to 30.9.2003, was further extended by eleven months, and in view thereof the application under section 24, itself, was premature and, hence not maintainable. He also assailed the jurisdiction on the ground that the provisions of Section 55(2) of the Act were not observed and/or considered by the competent authority in proper

perspective and, therefore, the impugned orders deserve to be set aside. He submitted that the landlord did not comply with the requirement of registration of the subsequent agreement by which the period of licence was extended for further eleven months. In the alternative, Mr Kamdi submitted that the agreement, though was styled as leave and licence, in fact it was a lease agreement and, therefore, the competent authority had no jurisdiction to entertain the application under section 24 of the Act. In support of this submission, he invited my attention to the letter of the petitioner dated 4.11.99 addressed to the respondent stating that he was put in possession of the suit flats on lease basis on the terms mentioned therein. There is an endorsement on the said letter of one Mr Sukamar S. Sanghavi,(Manager of the registered society) for and on behalf of the respondent having received the said letter. On the basis thereof it was submitted that she admitted that it was a lease and not a leave and licence agreement. This submission is devoid of any merits. The agreement styled as "Leave and Licence" itself is very clear apart from the fact that it was a registered document. The intention of the parties is clearly reflected in every recital of the said agreement and by no stretch of imagination one could treat it as a lease agreement. Merely because one Sukumar Sanghavi, Manager

of the registered society, made an endorsement for and on behalf of the respondent of having received the said letter, does not mean that she accepted the contents of the letter. In fact, the letter dated 14.10.2003 sent by the petitioner to the respondent prior to the suit indicates that he also intended to execute a leave and licence agreement.

4. He then invited my attention to the fax copy of the draft of leave and licence agreement allegedly sent by the respondent. On the basis thereof he submitted that the respondent had agreed to extend the licence period for another eleven months which was expiring on 30.9.2003 and in view thereof the period of leave and licence agreement cannot be said to have expired. He further submitted that the authorities below while considering this aspect have completely overlooked the provisions of Section 55(2) of the Act.

5. The respondent has denied to have sent the said fax copy of "leave and licence" agreement. Even if it is assumed that it was sent by the respondent, it would not be possible to infer on the basis thereof that the period of leave and licence stood extended automatically. Admittedly, the fax copy of the leave

and licence agreement was not signed by the parties, apart from the fact that there is nothing on record to indicate that the respondent sent the said draft to the petitioner as claimed by the petitioner. As a matter of fact, there is a letter on record written by the respondent dated 18.9.2003, vide Annexture-2 to the affidavit-in-rejoinder, which clearly shows that the respondent had requested the petitioner to vacate both the flats. She stated in the said letter that she was no more interested to give her flats on leave and licence to the petitioner as she desired to sell both the flats. Keeping in view these documents and other material placed on record and the submission of Mr.Kamdi, learned counsel for the petitioner that the conditions contemplated under section 55(2) of the Act, were not observed, must be rejected. Section 55 only imposes burden on the landlord to register the agreement and nothing more. If the agreement is not registered by the landlord the contention of the tenant about the terms and conditions in respect of the premises shall prevail, unless proved otherwise. Sub-section (1) of Section 55 provides that the agreement should be in writing and shall be registered under the Registration Act. There is no written agreement, as claimed by the petitioner, for a further period of eleven months and, therefore, it cannot be said that the provisions of

section 55 have not been observed by the landlord and the benefit should be given to the petitioner accepting the case of the petitioner as contemplated under sub-section (2) of Section 55. In my opinion, the impugned orders do not warrant interference by this court in its extremely limited jurisdiction under Article 227 of the Constitution of India. The writ petitions,therefore, fail and dismissed as such.

6. At this stage, Mr.Kamdi, learned counsel for the petitioner, prays for breathing time of six weeks to the petitioner to approach the Supreme Court. The learned counsel for the respondent, though opposed the prayer, I am inclined to grant the time as prayed for.Hence the following order.

7. The petitioner to vacate the suit premises within six weeks from today subject to filing an usual undertaking by all the adult members in the family within two weeks from today with an advance copy thereof to the advocate for the respondent. If the petitioner fails to file the undertaking, as aforestated, it will be open for the respondent to execute the decree.

(D.B.BHOSALE,J.)